

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket Nos. 2021-082-00161R; 2021-103-00166R; 2021-103-00167R;  
2021-103-00170R; 2021-103-00171R; 2021-103-00172R

**Jordan Brauns (Atlas Real Estate Co., LC & Nelson Property Holdings, LLC),**  
Appellant,  
vs.  
**City of Davenport Board of Review,**  
Appellee.

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**Introduction**

The appeals came on for consideration before the Property Assessment Appeal Board (PAAB) on March 24, 2022. Jordan Brauns was self-represented. City of Davenport Attorney Tom Warner represented the Board of Review.

Atlas Real Estate Company, LC and Nelson Property Holdings, LLC own multiple residential parcels located in Davenport. Brauns petitioned the Board of Review claiming that the properties are assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1)(b) (2021). The Board of Review denied the petitions. (Ex. B).

Brauns then appealed to PAAB reasserting the over assessment claim.

**Findings of Fact**

The subject properties are all condominium units located in six apartment-style buildings. In or about 2008, all of the buildings were converted to a horizontal property regime under Iowa Code Chapter 499B.<sup>1</sup> As a result, the property's assessment

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<sup>1</sup> From PAAB's experience, it was common at that time to convert apartment buildings to horizontal property regimes in order to receive the more financially beneficial rollback applicable to residentially-

classification was changed to residential. Furthermore, pursuant to section 499B.11, all of the 34-individual units were separately parceled. Brauns questioned this, believing a Form 1120-H was never filed with the IRS.

The following six tables summarize the individual parcels and their respective January 1, 2021 assessments. (Ex. A).<sup>2</sup>

<b>Docket: 2021-082-00161R (Atlas Real Estate Co., LC)</b>							
<b>Address: 2828 N Elsie Avenue</b>							
	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2107-01A	698	2	1	\$4,970	\$30,960	\$35,930
Unit #2	O2107-02A	556	1	1	\$4,970	\$26,550	\$31,520
Unit #3	O2107-03A	726	2	1	\$4,970	\$43,450	\$48,420
Unit #4	O2107-04A	726	2	1	\$4,970	\$43,450	\$48,420

<b>Docket: 2021-103-00166R (Atlas Real Estate Co., LC)</b>							
<b>Address: 3234 Heatherton Drive</b>							
	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2107-01B	532	1	1	\$3,060	\$26,560	\$29,620
Unit #2	O2107-02B	531	1	1	\$3,060	\$26,560	\$29,620
Unit #3	O2107-03B	729	2	1	\$3,060	\$43,140	\$46,200
Unit #4	O2107-04B	728	2	1	\$3,060	\$43,140	\$46,200
Unit #5	O2107-05B	729	2	1	\$3,060	\$39,130	\$42,190
Unit #6	O2107-06B	728	2	1	\$3,060	\$39,130	\$42,190

<b>Docket: 2021-103-00167R (Nelson Property Holdings, LLC)</b>							
<b>Address: 3328 W 29th Street</b>							
	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2101-01E	552	1	1	\$3,360	\$28,440	\$31,800
Unit #2	O2101-02E	539	1	1	\$3,360	\$28,440	\$31,800
Unit #3	O2101-03E	730	2	1	\$3,360	\$45,300	\$48,660
Unit #4	O2101-04E	730	2	1	\$3,360	\$45,300	\$48,660
Unit #5	O2101-05E	758	2	1	\$3,360	\$42,390	\$45,750
Unit #6	O2101-06E	759	2	1	\$3,360	\$42,390	\$45,750

classified property. See *Dinkla v. Guthrie Cnty. Bd. of Review*, 2006 WL 2422170 \*1 (Iowa Ct. App. 2006). Due to more recent legislation, multi-family properties are now typically classified residential and therefore converting apartment buildings to horizontal property regimes has fallen out of favor.

<sup>2</sup> There are six dockets, each with between four to six individual parcels appealed for a total of thirty-four properties. The evidence is the same for all six dockets. While there are multiple property record cards in each docket, for expedience we will refer to them in the singular, Exhibit A. The same will be done for exhibits B and C, which are the Board of Review decisions and petitions for each unique parcel.

**Docket: 2021-103-00170R (Nelson Property Holdings, LLC)****Address: 3331 W 29th Street**

	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2108-01	551	1	1	\$3,470	\$27,630	\$31,100
Unit #2	O2108-02	553	1	1	\$3,470	\$27,630	\$31,100
Unit #3	O2108-03	738	2	1	\$3,470	\$44,000	\$47,470
Unit #4	O2108-04	740	2	1	\$3,470	\$44,770	\$48,240
Unit #5	O2108-05	766	2	1	\$3,470	\$41,210	\$44,680
Unit #6	O2108-06	766	2	1	\$3,470	\$41,270	\$44,740

**Docket: 2021-103-00171R (Nelson Property Holdings, LLC)****Address: 3359 Heatherton Drive**

	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2107-01D	549	1	1	\$2,990	\$27,600	\$30,590
Unit #2	O2107-02D	550	1	1	\$2,990	\$27,600	\$30,590
Unit #3	O2107-03D	740	2	1	\$2,990	\$44,000	\$46,990
Unit #4	O2107-04D	740	2	1	\$2,990	\$44,000	\$46,990
Unit #5	O2107-05D	776	2	1	\$2,990	\$41,180	\$44,170
Unit #6	O2107-06D	776	2	1	\$2,990	\$41,180	\$44,170

**Docket: 2021-103-00172R (Atlas Real Estate Co., LC)****Address: 3342 Heatherton Drive**

	Parcel #	Unit Size (SF)	Beds	Baths	Assessed Land Value	Assessed Dwelling Value	Total Assessed Value
Unit #1	O2107-01C	560	1	1	\$2,920	\$27,680	\$30,600
Unit #2	O2107-02C	560	1	1	\$2,920	\$27,680	\$30,600
Unit #3	O2107-03C	727	2	1	\$2,920	\$43,580	\$46,500
Unit #4	O2107-04C	727	2	1	\$2,920	\$43,580	\$46,500
Unit #5	O2107-05C	727	2	1	\$2,920	\$39,630	\$42,550
Unit #6	O2107-06C	727	2	1	\$2,920	\$39,630	\$42,550

The six buildings were built between 1969 and 1976, with between 3170 and 4900 (rounded) square feet of gross building area. All thirty-four parcels are listed with a grade of either 4-05 or 4-10 (average quality) and in normal condition. The units are either 1 bed/1 bathroom or 2 beds/1 bathroom. In addition to the actual unit sizes reported in the tables, the units include an allocation of the common area for the host building. Additional negative adjustments are made to units located on the lower level of

the buildings. Upper-level units without exterior brick have a slightly lower replacement cost new.

We note all of the units in the six subject buildings had a prior transaction in January 2020 for \$1,025,000. There is no information about this transaction in the record.

Jordan Brauns, is the primary owner of both Atlas Real Estate Company, LC, and Nelson Property Holdings, LLC. Brauns, through his companies, purchased all of the subject properties in two transactions. (Exs. A & D). 2828 North Elsie Street, Units 1-4; 3234 Heatherton Drive Units 1-6; and 3342 Heatherton Drive, Units 1-6 were purchased in July 2020 as a single transaction for \$544,000, coded normal.<sup>3</sup> These properties are held by Atlas Real Estate Company, LC.

Brauns testified the remaining three properties: 3359 Heatherton Drive, Units 1-6; 3328 W 29th Street, Units 1-6; and 3331 W 29th Street, Units 1-6 were purchased in April 2021 as a single transaction for \$630,000, also coded normal. These properties are held by Nelson Property Holdings, LLC. However, we note the property record cards for all but one of the units in these three buildings only reflect the January 2020 sale of \$1,025,000. 3359 Heatherton Drive, Unit 6 is the only unit in this bulk sale that reflects the April 2021 transaction of \$630,000.

Brauns testified all of the units are owned by his companies and rented to tenants; there is no plan to sell any of the units individually. He testified he was not aware they were set up as a horizontal property regime when he purchased them.

Brauns explained the purchase price of the subject units was between \$34,000 and \$35,000, yet they were assessed for roughly \$39,000 to \$42,000 per unit. (Ex. 1, pp. 3 & 5). In his opinion, because the assessed values per unit are greater than his recent sale price per unit and all were purchased in an arm's-length transaction, they are over assessed. Without reaching a decision on whether the sale price per unit or the assessed values of each unit represent a market value of the subject properties, we

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<sup>3</sup> The property record card indicates the sale was normal. Iowa Dept. of Revenue, Sales Condition Codes, <https://tax.iowa.gov/sites/default/files/2021-01/NUTCSalesConditionCodes-v5.pdf> (stating a NUTC Code of '0' indicates a normal sale).

note it is not unusual for a unit price to be lower when purchased as a multi-parcel transaction.<sup>4</sup> Here, the subject units were bundled and purchased in lots of 16 and 18 units. Conversely, the assessments represent the value of a single unit, which would typically be higher when compared to a multi-parcel unit allocation.

Brauns testified the subject properties are all located in an urban revitalization exemption zone, which encourages investors to purchase properties that require improvement. Further, he asserts the subject's neighborhood is in an area of higher crime and confirmed gun-fire. (Ex. 1, p. 4). We note each property is receiving a 10% obsolescence adjustment for the area.

Brauns submitted seven properties that he testified are located on the same streets and neighborhoods as the six subject buildings. (Ex. 1). He asserts they are four-, six- or twelve-plex's that are substantially identical to his properties. The following table summarizes his comparable properties. PAAB took judicial notice of the comparable properties' publicly available listings on the Assessor's website (Beacon pages) pursuant to PAAB Administrative Rule 701-126.7(3)(g). (Exs. 2-8).

Comparable Property Address	Sale Date	Sale Price	# of Units	Gross Building Area (SF)	2021 Assessed Value	SP/Unit	AV/Unit
1 - 3539 Heatherton Dr	Jan-22	\$300,000	12	9,504	\$272,050	\$25,000	\$22,671
2 - 3023 N Michigan Ave	Oct-21	\$120,000	4	3,432	\$122,830	\$30,000	\$30,708
3 - 3374 Heatherton Dr	Nov-21	\$150,000	6	5,200	\$153,170	\$25,000	\$25,528
4 - 3356 Heatherton Dr	Nov-21	\$150,000	6	5,200	\$151,570	\$25,000	\$25,262
5 - 3348 Heatherton Dr	Nov-21	\$150,000	6	5,148	\$145,310	\$25,000	\$24,218
6 - 3240 Heatherton Dr	Aug-21	\$150,000	6	5,148	\$133,180	\$25,000	\$22,197
7 - 2617 N Clark St	Sep-21	\$275,000	12	11,475	\$307,140	\$22,917	\$25,595

First, we note all seven properties sold in the fourth quarter of 2021 or in 2022, well after the January 1, 2021, assessment date in question. For this reason alone, we would most likely not consider the sales relevant in establishing an opinion of market

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<sup>4</sup> "The principle of balance governs the related principles of diminishing returns, contribution, surplus productivity, and conformity. The law of diminishing returns holds that increments in the agents of production added to a parcel of property produce greater net income up to a certain point. At this point—the point of decreasing or diminishing returns—any additional expenditures will not produce a return commensurate with the additional investment." THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 26 (15th ed. 2020).

value as of January 1, 2021. Brauns asserts this is relevant because “we are in an appreciating market” and they still sold significantly less than what he paid for the subject properties.

Separately, we note that, but for 3023 N Michigan Avenue, permits for renovations were taken out very soon after these properties were purchased. This fact raises a question about the condition of these properties at the time of their sales.

More importantly, Brauns’ comparable properties are all commercial apartment buildings with a multi-residential classification. This is an important distinction between them and the subject. This means the individual units in each of Brauns’ comparables cannot be sold individually but rather each of his comparables consist of an entire building which must be sold and valued as a single unit.

The Board of Review submitted the 2020 sales of two six-plex properties, as well as nine individual condominium sales. (Ex. D). The six-plexes sold for roughly \$33,600 to \$62,500 per unit. The condominiums sold for \$63,000 to \$97,000 per unit.

### **Analysis & Conclusions of Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Brauns contends the subject property is over assessed as provided under Iowa Code section 441.37(1)(a)(1)(b).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the

assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted). When the taxpayer “offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation.” Iowa Code § 441.21(3). To be competent evidence, it must “comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782 (citations omitted).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* “Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value.” *Id.* “In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.” *Id.*

The properties are apartment units operating under a horizontal property regime pursuant to Iowa Code Chapter 499B.<sup>5</sup> When discussing apartments in a horizontal property regime, Iowa Code section 499B.10 states “each individual apartment located

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<sup>5</sup> Brauns indicated he may not have been aware of this. We recommend he review the properties' transfer and historical documents which can typically be found from the County Recorder's Office ([iowalandrecords.org](http://iowalandrecords.org)).

in the building and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall constitute for all purposes a separate parcel of real property and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state...” Section 499B.11 describes how units are to be assessed and taxed for property taxation. It states:

All real property taxes and special assessments shall be assessed and levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as these apartments and appurtenances are separately owned, and not on the entire horizontal property regime. The fair market value determined for an apartment includes the value of its appurtenant share or percentage of the land, general common elements, and limited common elements.

In *Dinkla v. Guthrie County Board of Review*, a property owner claimed his six-unit apartment complex was over assessed. 2006 WL 2422170 (Iowa Ct. App. 2006). Interpreting section 499B.11, the Court of Appeals found the apartments must be valued separately; not collectively as a whole unit. It concluded the property owner failed to offer evidence valuing the individual apartment units and affirmed the assessor’s values.

Pursuant to section 499B.11 and *Dinkla*, the subject parcels must be individually valued. To prevail on his claim, Brauns must do more than just show the total values of the complexes are in error. He must demonstrate the individual values of each unit are excessive and their correct value.

In support of his overassessment claim, Brauns offers sales of nearby apartment complexes in 2021 and 2022, and the sales of the subject properties in 2020 and 2021. From these sales, Brauns calculated per unit sale prices and compared them with the subjects’ assessed values.

We first consider the nearby apartment sales. We find these sales less persuasive than the subject sales. First, none of them are in a horizontal property regime. Second, but for 3023 N Michigan Avenue, the records show post-sale permits were taken out for remodeling. Thus, we question whether their conditions at the time of sale are consistent with the subject parcels’ conditions. Related to that concern, we know very little about these properties. Although some of the properties’ exteriors bear



resemblance to the subject buildings, we do not know their unit mixes or other pertinent facts. Lastly, no adjustments have been made to these sales to ensure the sale prices would be reflective of the subject parcels' market value. *Soifer*, 759 N.W.2d at 783 ("When sales of other properties are admitted, the market value of the assessed property must be adjusted to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments."). Based on the foregoing, we give these sales no consideration.

We do not necessarily share the same concerns with the sales of the subject parcels. However, a major issue with using any of the sales, including the subject sales, is that Brauns has not attempted to allocate individual values to any of the subject units. Yet, it is clear that all of the units are not identical and we do not believe they would all have equivalent market values. Without an allocation of the sale price to the individual units, it becomes impossible to determine whether individual unit assessments are excessive.

Additionally, it is commonly understood to be the case that the more units of an item purchased, the lower the per unit cost will be. The subject properties were purchased in bulk transactions, which might lead to a lower per-unit cost than if sold individually. On a per-unit basis, the individual condominium unit sales the Board of Review submitted typically sold for more than the bulk transactions in the record. The subject parcels are required by law to be valued individually and are freely alienable parcels of real estate.

In conclusion, while we have concerns that relying on the bulk sales of the subject properties might distort the value of the individual units, our primary concern is that Brauns has not allocated the sale prices to any of the units. Given differences among the units, we do not believe applying the same unit price to each unit would be appropriate in attempting to approximate each unit's fair market value. Because there is no evidence of the individual unit values, we cannot conclude the assessments are excessive.

## Order

PAAB HEREBY AFFIRMS the City of Davenport's Board of Review action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

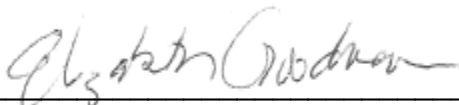
Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2021).



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Karen Oberman, Board Member



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Elizabeth Goodman, Board Member



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Dennis Loll, Board Member

Copies to:

Jordan Brauns by eFile

City of Davenport's Board of Review by eFile